

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MAINE

3 -----  
4 UNITED STATES OF AMERICA, CRIMINAL ACTION

5 Plaintiff Docket No: 2:14-69-JDL-11  
6

7 -versus-

8  
9 PIERRE AZOR,

10 Defendant  
11 -----  
12 Transcript of Proceedings

13 Pursuant to notice, the above-entitled matter came on  
14 for **Sentencing** held before **THE HONORABLE JON D. LEVY**,  
15 United States District Court Judge, in the United  
States District Court, Edward T. Gignoux Courthouse,  
156 Federal Street, Portland, Maine, on the 10th day of  
September 2015 at 10:07 a.m. as follows:

16  
17 Appearances:

18 For the Government: David B. Joyce, Esquire  
19 Assistant United States Attorney

20 For the Defendant: Robert C. Andrews, Esquire

21 Also Present: Heather Belanger, U.S. Probation

22 Lori D. Dunbar, RMR, CRR  
23 Official Court Reporter

24 (Prepared from manual stenography and  
25 computer aided transcription)

1 (Open court. Defendant present.)

2 THE COURT: Good morning.

3 MR. JOYCE: Good morning, Your Honor.

4 MR. ANDREWS: Good morning, Your Honor.

5 THE COURT: We are proceeding in the case of  
6 United States versus Pierre Azor. This is Docket  
7 14-CR-69. Counsel, please note your appearances for  
8 the record.

9 MR. JOYCE: Good morning, Your Honor, David  
10 Joyce for the United States.

11 THE COURT: Thank you.

12 MR. ANDREWS: Robert Andrews for Pierre Azor.

13 THE COURT: Thank you. And, Mr. Joyce, this  
14 is a case in which there are no victims for which  
15 notice is required; is that correct?

16 MR. JOYCE: Yes, Your Honor.

17 THE COURT: Mr. Azor, I'd like you to stand,  
18 please. The overall purpose of this hearing that we'll  
19 now be conducting is for me to sentence you based upon  
20 your conviction. I see there's people outside. Do  
21 they want to come in; do we know?

22 THE DEFENDANT: This is my fiancée, yes, sir.

23 THE COURT: Would she like to come in?

24 Perhaps someone could let them know they can come in.

25 MR. ANDREWS: I think she's out there because

1 there's a young child.

2 THE COURT: Oh, I'm sorry, okay. It wasn't  
3 clear to me whether she felt that she couldn't come in  
4 or not. All right, thank you.

5 So, again, the purpose of this hearing is for you  
6 to be sentenced based upon your conviction. I'm going  
7 to hear from the attorneys, I'll hear from you if you  
8 wish to speak, and of course from any witnesses that  
9 you may wish to present.

10 I'm going to be asking you and your attorney a  
11 series of questions. I want to be certain that you  
12 have read and understand the revised presentence  
13 report, that there is nothing that interferes with your  
14 ability to understand what is happening today, and  
15 overall to make sure you understand the sentence that I  
16 impose and the reasons for it. So let me begin with my  
17 questions.

18 Have you used any types of drugs or alcohol in the  
19 past 24 hours?

20 THE DEFENDANT: No, sir.

21 THE COURT: All right. And, Mr. Azor, when  
22 you speak you don't need to lean down into the  
23 microphone; it will pick you up if you remain standing,  
24 that's fine.

25 Mr. Azor, are you currently taking any

1           medications?

2           THE DEFENDANT: No, sir.

3           THE COURT: How far did you go in school?

4           THE DEFENDANT: Actually I went through a job  
5           corps and got my GED.

6           THE COURT: Are you able to read and write?

7           THE DEFENDANT: Yes, sir.

8           THE COURT: Do you understand why you are here  
9           today?

10          THE DEFENDANT: Yes, sir.

11          THE COURT: And in your words why are you here  
12          today?

13          THE DEFENDANT: I'm here to get sentenced.

14          THE COURT: Is there anything that might  
15          interfere with your ability to understand what is being  
16          said today?

17          THE DEFENDANT: No, sir.

18          THE COURT: And do you authorize your attorney  
19          to speak on your behalf at today's hearing?

20          THE DEFENDANT: Yes, sir.

21          THE COURT: Mr. Andrews, have you read and  
22          discussed with Mr. Azor the revised presentence report  
23          in this case?

24          MR. ANDREWS: I have, Your Honor.

25          THE COURT: And you've had sufficient time to

1 do that?

2 MR. ANDREWS: Yes, Your Honor.

3 THE COURT: Is it your view that he  
4 understands the report?

5 MR. ANDREWS: He understands the contents of  
6 the report and how that report may affect his  
7 sentencing today.

8 THE COURT: Mr. Azor, have you read the  
9 revised presentence report in its entirety?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Have you had enough time to  
12 discuss it with Mr. Andrews?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Mr. Andrews, at this point in  
15 time, given the Government's response to your  
16 sentencing memorandum, what issues, if any, remain in  
17 dispute with respect to the revised presentence report?

18 MR. ANDREWS: Your Honor, with respect to the  
19 presentence report, the only issues would be the  
20 characterizations of the convictions and -- or the  
21 other past criminal incidences that are reported there  
22 and whether or not the Court may consider or should  
23 consider those characterizations. And the other issue,  
24 Your Honor, is whether it is appropriate to include a  
25 monitoring component of Mr. Azor's use of computer and

1 Internet because of the text messaging that was used in  
2 this case.

3 THE COURT: All right. With respect to the  
4 first question, as I understand your objection, it is  
5 that the Court in your view should not consider  
6 information regarding prior arrests that did not result  
7 in convictions that are reported in the revised  
8 presentence report; is that correct?

9 MR. ANDREWS: That is correct, and some of the  
10 characterizations reported about the conduct that did  
11 result in convictions in other instances.

12 THE COURT: And is your objection in  
13 particular with the prior conviction that resulted in  
14 Mr. Azor's incarceration that what's set forth in the  
15 report is incorrect?

16 MR. ANDREWS: It's -- our problem with it,  
17 Your Honor, is not so much that it's incorrect but that  
18 it is taken from police reports and not reported from  
19 agreed-to information or information that would  
20 otherwise be necessary by proof beyond a reasonable  
21 doubt.

22 THE COURT: So your objection is as set forth  
23 in your memorandum, which is as a matter of law you  
24 believe that it would be inappropriate for me to  
25 consider that information because of its source.

1 MR. ANDREWS: That's correct.

2 THE COURT: And do you have anything further  
3 to add to the argument that you've made in your  
4 memorandum?

5 MR. ANDREWS: I do not, Your Honor.

6 THE COURT: And, Attorney Joyce, is there  
7 anything further you wanted to say on that point?

8 MR. JOYCE: Your Honor, only that I'm unaware  
9 of any case extending Shepard to the lengths and  
10 reaches that Mr. Andrews seeks here.

11 THE COURT: All right. I have read all of the  
12 opinions that are cited in both memoranda on this  
13 question, and I conclude as a matter of law that it is  
14 appropriate for the Court to rely upon that information  
15 as it's been reported, and so to that extent the  
16 objection is overruled.

17 With respect to the monitoring condition, I'd like  
18 to actually defer our discussion and my resolution of  
19 that until we get to the supervised release conditions  
20 after I determine what the sentence should be in this  
21 case. So we will come back to that.

22 MR. ANDREWS: Certainly, Your Honor.

23 THE COURT: All right. So, Mr. Azor, again,  
24 you have read the revised presentence report in its  
25 entirety, correct?

1                   THE DEFENDANT: Yes, sir.

2                   THE COURT: And you feel that you understand  
3 it and you've had sufficient time to discuss it with  
4 your lawyer.

5                   THE DEFENDANT: Yes, sir.

6                   THE COURT: And apart from the objections that  
7 I've just discussed with Mr. Andrews, is there anything  
8 else in the revised presentence report that you feel is  
9 inaccurate?

10                  THE DEFENDANT: No, sir.

11                  THE COURT: And, Attorney Andrews, do you  
12 agree that apart from the issues that we've just  
13 discussed the report is otherwise accurate and correct  
14 in all other respects?

15                  MR. ANDREWS: It is, Your Honor.

16                  THE COURT: Thank you, you can be seated.

17 I'll hear from the Government at this time with respect  
18 to sentence.

19                  MR. JOYCE: Thank you, Your Honor. The facts  
20 of this case are well known to the Court both from the  
21 suppression hearing and the thorough presentence report  
22 that was prepared by the probation officer in this  
23 matter.

24 I think what's striking here is the quantity of  
25 drugs that Mr. Azor was bringing to Maine, 1,075

1       oxycodone pills, if released to the streets would have  
2       had a devastating impact on a population here in the  
3       state of Maine that is already undergoing a serious  
4       opiate crisis that appears to be continuing to this  
5       very day without any significant downturn in its  
6       impact.

7                  I would suggest to the Court that a sentence  
8       within the guideline range here is appropriate in light  
9       of the conduct and the impact that this conduct would  
10      have had on this community.

11                 THE COURT: Do you have anything to say as to  
12      where within the guideline range a sentence would be  
13      appropriate in this case?

14                 MR. JOYCE: I think the low end would be  
15      sufficient but not greater than necessary, Your Honor.

16                 THE COURT: Thank you. Mr. Andrews?

17                 MR. ANDREWS: Your Honor, Mr. Azor came to  
18      this country in 1994 at the age of 11 as a refugee from  
19      Haiti. One would hope that when leaving such a  
20      situation that things would improve, but unfortunately  
21      for Mr. Azor things did not improve and in some ways  
22      they got worse.

23                 What happened to Mr. Azor was that he grew up in  
24      significantly disadvantaged circumstances, and when he  
25      got to this country, instead of being cared for by the

1       adults that brought him here, they neglected him and  
2       they abused him and that sort of resulted in his having  
3       to leave his parents and go to other relatives who,  
4       instead of treating him as a human and as a family  
5       member, they essentially treated him as a slave who  
6       they didn't give food to, they didn't allow him to  
7       sleep in a bed like a normal child, and they  
8       essentially used him as labor to watch the other  
9       children that were in that home.

10           That led Mr. Azor to fend for himself, and like  
11          many people who grow up in disadvantaged circumstances  
12          with no education, one of the skills that they're  
13          taught is to -- to survive is to get money however they  
14          can. And unfortunately that creates circumstances  
15          where there are people who are willing to participate  
16          in the United States market for illegal narcotics.

17           Mr. Azor has been sentenced prior for a marijuana  
18          conviction. We know that from the presentence report.  
19          We have seen that. And he's done a significant amount  
20          of time because of that conviction. That conviction  
21          has also led to a deportation order from immigration  
22          back to his homeland in Haiti, but they won't take him.  
23          Those facts are significant in that we're here again.

24           So why is it that we're here again? Well,  
25          unfortunately, things got hard for Mr. Azor and he went

1 back and relied on the things that he learned to do as  
2 a child to survive and he began to become involved in  
3 the drug trade again. And we can see that with his  
4 move back here to Portland, and we can see that from  
5 the information that's gathered from the wiretaps that  
6 in February of 2014 -- I'm sorry, 2013 -- no, 2014 that  
7 he was introduced to the other members of this  
8 conspiracy, and that introduction led to what became  
9 the seizure of 1,075 pills. It is a significant amount  
10 of pills. But the evidence in this case we suggest  
11 shows that he is a courier and that that is his role in  
12 this offense. And as a courier we think that that  
13 should put him in a certain position.

14 Now, some of the upper-end sentences that have  
15 been put in this case are the five-year sentence for  
16 Pierre Dubois, and then there's -- and the conspiracy  
17 leader in this case hasn't been sentenced yet, but we  
18 expect that he may have a sentence that is similar to  
19 Mr. Dubois', given their relationship. And then there  
20 is Dimitry Gordon, who is not connected with this  
21 particular conspiracy, but his sentence was 28 months.  
22 And so we believe that Mr. Azor, because of his role,  
23 should be something less than 28 months.

24 This Court has the power to sentence Mr. Azor to  
25 something less than the guidelines. And that is what

1 we are asking for is a variant sentence in this case  
2 based, one, on his role in the offense and the  
3 disparity that a high guideline sentence from our  
4 perspective would be high because of the other  
5 sentences that have been handed down in this case  
6 justifies a significant reduction from the guidelines.  
7 In my sentencing memorandum I've suggested that an  
8 appropriate variant sentence is two years.

9 I'd also like this Court to consider the fact that  
10 he's likely to spend time in detention after his  
11 sentence has been concluded because of the immigration  
12 consequence and the deportation order. It will take  
13 some time for Homeland Security and Immigration and  
14 Customs Enforcement to decide that they aren't going to  
15 be able to repatriate him to Haiti again, and so we're  
16 asking for a further reduction to 18 months for this  
17 sentence so that he'll essentially be doing 24 months.

18 THE COURT: Mr. Andrews, the revised  
19 presentence report in this case details that following  
20 Mr. Azor's arrest he made bail and, not simply being a  
21 courier, sort of returned to active drug selling. How  
22 do you -- how should I treat that information in  
23 arriving at a sentence in this case?

24 MR. ANDREWS: Your Honor, his arrest and the  
25 other conversations -- I think that the other

1 conversations are based partly on hearsay from what is  
2 gleaned from the wiretap information related to  
3 Dastinot and I think Pierre Dubois or someone else that  
4 he was communicating with. I understand that there  
5 were some discussions, but there isn't any other  
6 evidence to suggest, one, that there was a network of  
7 distribution, that there were other hand-to-hand sales  
8 with my client. Essentially what there is is  
9 conversation about him potentially coming back, but  
10 there is no indication that he actually did. And I  
11 don't think that we see any communications from him  
12 saying that he was back in the -- what we I guess call  
13 the game but back to dealing drugs.

14 And that's -- I don't think that that information  
15 should be considered because I don't think it's  
16 reliable. If it were reliable, we would see other  
17 evidence, including wiretap evidence of phone calls  
18 between them where prices and/or amounts are  
19 negotiated. We don't see that. We have a conversation  
20 where they talk about it, but we don't have numbers and  
21 amounts. And that is my particular problem with the  
22 way the facts were recounted in the presentence  
23 investigation report was that that didn't have the  
24 reliability that I would ordinarily see in a drug  
25 calculation. And that is why I suggest again that the

1 Court shouldn't consider that in terms of its variant  
2 sentence.

3 THE COURT: Thank you.

4 MR. ANDREWS: So, Your Honor, to conclude, I  
5 suggest that the Court sentence Mr. Azor to 18 months.

6 THE COURT: Thank you.

7 MR. ANDREWS: Mr. Azor would like to address  
8 the Court, as would his -- the mother of his child.

9 THE COURT: Thank you. Mr. Azor, as I think  
10 you know, you do have the right to speak now, you're  
11 not required to, but Mr. Andrews has indicated that you  
12 would like to make what's called allocution, which is  
13 your right. So if that's the case please stand up and  
14 go ahead and speak.

15 THE DEFENDANT: Good morning, Your Honor.

16 THE COURT: Good morning.

17 THE DEFENDANT: Your Honor, first I'd like to  
18 say that I take responsibility for my action and I'm  
19 truly sorry for the people that I hurt that I sold to,  
20 for things that -- people that I caused harm to. And I  
21 come to realize those people, it could have been my  
22 brother, it could have been somebody's brother,  
23 somebody's mom, somebody's kids that I sold drugs to.  
24 And I take responsibility for my action and I got  
25 regrets I got into that. Your Honor, growing up for

1 me, Your Honor, it was hard. Excuse me.

2 THE COURT: It's okay, take your time.

3 THE DEFENDANT: It was hard, Your Honor. I  
4 came to this country in '94. I came here in 1994 with  
5 my mother and my stepdad. And -- me and my little  
6 brother and -- excuse me. My little brother, we didn't  
7 have nobody to care for us. My stepdad used to abuse  
8 us and beat us. Sometimes they would not feed us, no  
9 food. They would not feed us with no food, so I  
10 remember when I was 14 me and my mom and my stepdad, we  
11 got into it because he was beating on me, beating on my  
12 little brother, and I didn't want that, I was tired of  
13 that. And the police called, if you look at my record  
14 you'll see the police called and we got into a fight  
15 and I got -- I ended up getting arrested because I  
16 wouldn't let him keep beating on us. And DHS got  
17 involved, they wanted to take me and my little brother.  
18 I didn't want that; I didn't want to grow up in a  
19 foster home.

20 So I end up leaving, they ended up kicking us out  
21 and we went to New York to my mom's sister's house,  
22 which when we get there, I thought they were going to  
23 treat us a lot better but they never did. They didn't  
24 send us to school, they -- excuse me. They didn't send  
25 us to school and they make us babysit because they have

1       a bunch of kids in the house. They had us babysitting.  
2       They would not buy us no clothes or nothing, and when  
3       they cook they would have -- everybody would take the  
4       food, they would just leave the food on the pot and we  
5       would just go and feed ourselves. And they would put a  
6       lock on the fridge. I never seen anybody put a lock on  
7       the fridge. They would put a lock on the fridge for us  
8       not to go in there and get no food if we was thirsty or  
9       nothing.

10           So -- and we stayed there for two years. I was  
11       tired of that, so I end up coming back to Boston at the  
12       age of 15 and I end up living with a friend of mine.  
13       And at first it was all fine and he told us in order  
14       for us to stay here we got to pay rent. I was 15 so  
15       what I did, there was -- I got a dishwashing job at a  
16       restaurant in Brookline, Mass., and I got a dishwashing  
17       job and I was working there. And I believe I was  
18       getting 7.50 an hour. And -- because my little brother  
19       was a little bit younger for him to get a job, so I was  
20       paying \$300 for the rent. And the restaurant got sold  
21       by a new owner so he fired me because I was under the  
22       age of 16, I got fired.

23           So at the time I didn't have no money, I didn't  
24       have a mom I could go to. I didn't even know my dad  
25       growing up; my dad died when I was young. So I end up

1 selling weed to get back -- in order for me and my  
2 brother to survive, so I end up selling weed, getting  
3 into trouble. And the neighborhood that I grew up,  
4 Your Honor, it's tough, it's hard, because I grew up in  
5 Boston, where I grew up, it's just -- it's either  
6 you're going to survive -- you'd be lucky if you make  
7 it past 21 where I grew up, a lot of killing, shooting,  
8 drugs. And so I didn't see nothing else but that in  
9 order for me to survive for me and my little brother so  
10 I have to sell drugs, which now I understand by doing  
11 that, Your Honor, it's not the best way to do. I  
12 remember me and Mr. Andrews having a --

13 MR. ANDREWS: Don't talk about anything we  
14 said.

15 THE DEFENDANT: Okay, and I was like -- it was  
16 so tough, Your Honor. So I got a job -- I got a job  
17 doing security, I have a few jobs, Your Honor, doing  
18 security. I have a job doing -- working in filing  
19 some -- and I try -- every time I try, Your Honor, it  
20 gets hard for me and I end up going back to selling  
21 weed and to make a living surviving.

22 And in Boston, Your Honor, the reason I came to  
23 Maine, in Boston the rent I was paying, me and her, it  
24 was 1,350, which I couldn't afford 1,350 for -- because  
25 I got three kids, one with her and two -- and the

1       oldest is 16, he's a sophomore, he's about to graduate  
2       in the next two years. And I feel so bad that I don't  
3       even know if I'm going to be there to see his  
4       graduation. I never really had a dad, so I'm trying to  
5       be the best that I can be for my kids.

6           And I know by selling drugs to people in the  
7       community, I know it's wrong to do it, Your Honor, and  
8       I'm truly sorry, Your Honor. I've been under house  
9       arrest. I've been working, Your Honor, doing what I'm  
10      supposed to be doing. I've been drug free. I haven't  
11      done no drugs, I've been working ever since, Your Honor.  
12      So it really be hard but I am trying my best, Your  
13      Honor.

14           And I ask Your Honor please, please find in your  
15      heart to give me the lightest sentence that you can,  
16      Your Honor. Because I know I could be a better man, I  
17      know I could change, Your Honor. I know I could be a  
18      productive member of society, Your Honor, because  
19      that's what I have been doing. You haven't heard  
20      anything about me getting in no trouble. I've been  
21      working at Ruby Tuesday in Auburn, been going to work  
22      all the time, drug free. I haven't done no drugs and  
23      I'm clean, Your Honor. So please, Your Honor, have  
24      mercy on me.

25                   THE COURT: Thank you, Mr. Azor.

1 MR. ANDREWS: Your Honor, at this time I'd  
2 like to ask that Jasmine Tartt be brought in the  
3 courtroom. I'd also like permission for Mr. Azor to  
4 sit in the back with his child while she speaks to the  
5 Court, if that's okay with the Court.

6 THE COURT: That's fine.

7 MR. ANDREWS: Thank you. Your Honor, this is  
8 Ms. Tartt, she'd like to address the Court.

9                   THE COURT: Thank you. Would you begin by  
10                  stating your full name, and also pull the microphone  
11                  down so that it's in front of your -- there you go,  
12                  that's great. Please go ahead.

13 MS. TARTT: Hi, I am Jasmine Tartt.

14 THE COURT: Go ahead.

15 MS. TARTT: I'm Pierre's girlfriend.

16 THE COURT: It's okay.

17 MS. TARTT: Sorry. I have known him for about  
18 four years.

19                   THE COURT: One second, I'm having trouble  
20 hearing you, so let's wait to see if the baby calms  
21 down.

22 MS. TARTT: She want me.

23 THE COURT: She wants you? Would it help if  
24 you held her while you spoke?

25 MS. TARTT: Yeah, I just don't want to be

1           rude.

2           THE COURT: That's okay, why don't we do that.

3           Why don't you hold the child and you can bring her up  
4           to the microphone.

5           MS. TARTT: This is his daughter, Ghislaine.

6           THE COURT: Thank you.

7           MS. TARTT: Thank you. I've been with Pierre  
8           a couple years now, about four years. We have a  
9           beautiful child together. And as the years of  
10          knowing -- getting to know him, his past and his  
11          struggles that he went through, became a survivor. And  
12          I do want to say thank you for giving a chance to  
13          making him actually a better man, going out, getting a  
14          job, being more, you know, supportive with his family.  
15          And he does, and as I, you know, grow more to see him  
16          now as becoming a better man, I do see that he is sorry  
17          for those that he did hurt, you know, along the way.

18          And he's a great dad. He do have two other  
19          children. Every morning they call. Every morning she  
20          wakes up singing the ABCs or Itsy Bitsy Spider. He's  
21          just a wonderful man and it -- like I said, watching  
22          him growing from his struggles to his survival, you  
23          know, he definitely is sorry.

24          THE COURT: Thank you.

25          MS. TARTT: You're welcome.

1 MR. ANDREWS: You're all set.

2 Your Honor, one of the other purposes of  
3 sentencing, Your Honor, is to provide necessary medical  
4 and/or substance abuse treatment. One of the things  
5 that came along with Mr. Azor's involvement was the use  
6 of oxycodone pills. So far he's been able to maintain  
7 his sobriety while on bail, but drug treatment would be  
8 useful and we would request that any sentence that the  
9 Court fashion include the 500-hour drug program and  
10 that -- we also ask that the Court recommend that he be  
11 held in Berlin, New Hampshire, so that he can be close  
12 to his family and that they may have a chance to see  
13 him over the period of incarceration.

14 THE COURT: Mr. Andrews, I'm not certain of  
15 the period -- minimum period within which Mr. Azor  
16 would be required to serve to be eligible for the  
17 500-hour drug program, but I suspect that it's more  
18 than what you have proposed by way of the sentence in  
19 this case.

20 MR. ANDREWS: Well, Your Honor, I think that  
21 if it were 18 months, I think that's the limitation.  
22 If it were 24 I think that's within the  
23 characterization of how long it can be, it would take a  
24 year for him to complete the program and he can get as  
25 much as a year off for his participation in the

1 program. I'm suggesting that it is sufficient enough  
2 time, but we would ask for the recommendation. And I  
3 think the BOP makes that determination when he gets  
4 there and if there's space available, that's why it's a  
5 recommendation.

6 THE COURT: All right.

7 MR. ANDREWS: Thank you.

8 THE COURT: Is there anything further from the  
9 Government?

10 MR. JOYCE: Your Honor, I just wanted to  
11 briefly respond to the suggestion that Mr. Azor's role  
12 was limited to that of a mere courier. I think  
13 Paragraph 9 and Paragraph 14 of the presentence report  
14 contain information suggesting that's not entirely the  
15 case. Mr. Azor has also referred to the people I sold  
16 to, would suggest he's more than just a mere courier.  
17 And I think the Court's absolutely correct that  
18 following his arrest and release on state charges the  
19 information from the wiretap interception suggests that  
20 he had not completely removed himself from the drug  
21 business. That's all I have, thank you.

22 THE COURT: Thank you. Attorney Andrews,  
23 anything further?

24 MR. ANDREWS: Your Honor, I just -- we would  
25 ask that the Court also -- and this may be premature

1 and maybe we should address this after the sentencing,  
2 but we were also going to ask that he be allowed  
3 self-surrender and bail pending appeal. I don't know  
4 how the Court would like me to handle that; I just want  
5 to make sure the Court was aware that we would ask for  
6 that.

7 THE COURT: All right. Is there any objection  
8 by the Government with respect to self-reporting?

9 MR. JOYCE: Yes, Your Honor, I would ask he be  
10 remanded at this time. I think that the information in  
11 this case is insufficient to meet his burden by clear  
12 and convincing evidence that he's not likely to flee or  
13 pose a risk to the danger -- risk to the public.  
14 Mr. Azor, as noted in the presentence report, does have  
15 an order of removal from the United States, and I would  
16 suggest he be remanded at this time.

17 THE COURT: Attorney Andrews, anything further  
18 on that point?

19 MR. ANDREWS: Your Honor, we simply suggest  
20 that it would be clear and convincing evidence, we  
21 think that finding was made when he was released on  
22 the -- through the detention hearing process, and that  
23 his continued release is contingent upon his good  
24 behavior. And while I understand that probation has  
25 two complaints about him being late, one was because he

1 was feeding his child and it took longer for him to get  
2 home than he had expected, and the other, Your Honor,  
3 was his participation in a gathering for work related  
4 to New Year's. We suggest that those kinds of  
5 infractions aren't the kind of thing that would justify  
6 or cause the Court to be concerned that he's a flight  
7 risk now that he's been convicted and sentenced when  
8 he's been convicted for some time and those sort of  
9 findings still maintain their force through the appeal  
10 period. That's why we've asked for bail pending  
11 appeal.

12 THE COURT: All right. Thank you. Attorney  
13 Joyce, I do want to hear from you on the question of  
14 the electronic -- I'm sorry, the -- yes, the bail --  
15 the supervised release condition related to the  
16 computers and Internet access and the like. How could  
17 that be justified in this case, apart from the fact  
18 that, as it seems to be true in it seems almost every  
19 crime that comes to court now, cell phones are  
20 involved?

21 MR. JOYCE: Your Honor, I haven't seen that  
22 condition proposed prior to recently in connection with  
23 this case. I share the Court's concerns. I understand  
24 the probation office's position. At this time I would  
25 entirely defer to the Court as to whether it's

1 appropriate. It's not a condition the Government  
2 affirmatively is seeking.

3 THE COURT: Okay, thank you.

4 Mr. Andrews, anything further?

5 MR. ANDREWS: Your Honor, as I've indicated in  
6 my memorandum, I'm not going to repeat that, I just  
7 want to suggest that there -- in the case law, when  
8 this issue has come up with respect to people who have  
9 been convicted of possession of child porn offenses or  
10 distribution offenses related to the possession of  
11 child porn, that electronic monitoring like this was  
12 not a certainty. And there are in fact some courts, as  
13 I've indicated, that have said that, well, we have  
14 these sort of various factors that we want to consider.

15 And I think that what's important here is that the  
16 Court realizes that this is really just another mode of  
17 communication. This is really no different -- or the  
18 electronic communication that the probation department  
19 is using to justify these what we consider  
20 extraordinary monitoring requirements is really just  
21 another way of communicating just like voice, and we  
22 certainly haven't seen conditions where probation has  
23 asked for phone taps. And we suggest that it's  
24 inappropriate in this case. There's nothing to suggest  
25 that the use of computer was the extensive means of

1 communication, and there's nothing to suggest that the  
2 use of computer was an otherwise sophisticated part of  
3 the offense in this case. So we ask that the Court  
4 reject the imposition of that monitoring requirement.  
5 Thank you.

6 THE COURT: Thank you. I will now recess so  
7 that I can reflect on the arguments that have just been  
8 made before I determine finally what Mr. Azor's  
9 sentence will be. So we will be in recess for  
10 approximately 20 minutes.

11 (A recess was taken from 10:40 a.m. to 11:07 a.m.)

12 THE COURT: We're now resuming the sentencing  
13 in the case of United States versus Pierre Azor. You  
14 can be seated at this time. I'll indicate when you  
15 need to stand, Mr. Azor.

16 I have considered in arriving at sentence in this  
17 case the revised presentence report prepared by  
18 Ms. Belanger, as well as the sentencing memoranda that  
19 the attorneys have provided, as well as, of course, all  
20 that has been presented in court today.

21 The sentencing guidelines in this case produce the  
22 following numbers. The total offense level for  
23 Mr. Azor is 21. His criminal history category is II,  
24 and this results in a guidelines sentencing range of 41  
25 to 51 months. The guidelines indicate for this

1       criminal history category a period of supervised  
2       release of between one to three years, but this is a  
3       case in which the statutory minimum is three years, and  
4       so that will be -- that provides the floor for the  
5       period of supervised release.

6           Counsel, is there any objection to the guidelines  
7       as I've just indicated?

8           MR. JOYCE: No, Your Honor.

9           MR. ANDREWS: No, Your Honor.

10          THE COURT: Thank you. Mr. Azor, I have  
11       carefully considered all the materials that I've been  
12       provided, as well as the arguments that have been made  
13       by both Mr. Joyce and Mr. Andrews, as well as your own  
14       statement, as well as the statement of your girlfriend.

15          It is my responsibility under the law to arrive at  
16       a sentence which is sufficient but not greater than  
17       necessary to correspond to the need for the sentence,  
18       so my focus is on what is the need for the sentence  
19       here.

20          The law tells me that the sentence should reflect  
21       the seriousness of the offense, promote respect for the  
22       law, provide just punishment, afford adequate  
23       deterrence, protect the public from further crimes by  
24       you, and provide you with needed educational or  
25       vocational training, medical care, or other

1       correctional treatment in the most effective way.

2           And specifically I considered -- have considered  
3       in arriving at a sentence the nature and circumstances  
4       of the crime that you committed, your history and  
5       characteristics, the guidelines, the need to avoid  
6       disparities -- unwarranted disparities in sentencing  
7       between different defendants, and the need for  
8       restitution where it's appropriate, and there is no  
9       claim for restitution here. I've considered all those  
10      factors, but my focus has been on your history and  
11      characteristics and the nature and circumstances of the  
12      offense that you committed.

13           With respect to the guidelines in this case, I  
14      have carefully considered the guidelines. I have  
15      concluded that the guideline range is greater than the  
16      period necessary for incarceration, so I'm going to  
17      impose a sentence that varies from the guidelines, and  
18      I'll explain my reasons for that.

19           You've pled guilty to possession with intent to  
20      distribute oxycodone and aiding and abetting. This is  
21      a serious crime. It goes without saying it's a serious  
22      crime, particularly given the fact that you were  
23      transporting over a thousand tablets of oxycodone.  
24      The -- I'll return to the seriousness of the crime in  
25      just a moment, but let me first now focus upon your

1 personal characteristics, which I think are quite  
2 important in arriving at a sentence.

3 First of all, your age. You're 33 years old.  
4 You're not in your 20s. You are the father of two  
5 children, and you are in your 30s. Your life story is  
6 quite compelling. The fact that you came here as a  
7 refugee, as a relatively young child, and then were  
8 subject to what is really horrific abuse and neglect by  
9 the adults who were responsible for taking care of you  
10 is really tragic. You strike me and your history as  
11 has been portrayed to me as being a survivor. You have  
12 survived under some of the most difficult circumstances  
13 that a kid could be put through. Unfortunately, it's  
14 also pretty clear that you adapted to your  
15 circumstances and survived by ultimately turning to  
16 drugs and to the drug trade. That can't be excused but  
17 it certainly can be understood in view of your  
18 remarkable history.

19 It's also significant to me that there's no  
20 indication in any of the information I've received that  
21 you've ever received any type of sustained substance  
22 abuse treatment and, although I am aware that you  
23 received some vocational-related training, it doesn't  
24 seem as if you were ever subjected to really any  
25 significant and sustained effort to give you vocational

1 skills that would allow you to become employed and --  
2 in a way that you could live a decent life and not, as  
3 you have, turn to crime.

4 It's also significant to me that you do have a  
5 criminal history. You have served at least two years,  
6 it's not clear to me exactly how long it was, but I  
7 know it was at least two years in prison for a  
8 drug-related offense. And, sadly, that correctional  
9 experience was not sufficient to redirect your life,  
10 and here you are today.

11 It's also quite compelling that after your arrest,  
12 original arrest in March of 2014, in relation to this  
13 case, the record does reflect that you immediately  
14 turned -- returned to drugs as a way of supporting  
15 yourself.

16 On the other hand, I note that, and I think it's  
17 quite important to note that, for the -- since your  
18 release in May of 2014, so it's far longer than a year  
19 now, you appear to have done well and have worked and  
20 have been employed and, with a couple of blips, have  
21 otherwise complied with all requirements of  
22 supervision. This all suggests to me that you are a  
23 person that is capable of being rehabilitated and given  
24 the proper incentives and the proper direction and  
25 training. And that's positive.

1           So as is often the case, there are compelling  
2 reasons pointing in opposite directions as to what the  
3 appropriate sentence should be in this case, and it's  
4 my responsibility to try and make sense of them and to  
5 reconcile them on the one hand at the age of 33 still  
6 involved in -- at the age now of 33 but in your 30s  
7 still involved in the drug life deeply, committing a  
8 serious crime, having already spent years in prison,  
9 and understanding that this is the way that you've  
10 adapted to surviving in the world because of some  
11 terrible early experiences. And, on the other hand,  
12 that you seem to possess qualities which suggest that  
13 you could become a law-abiding and productive member of  
14 our society.

15           And the law tells me that the sentence in this  
16 case should be sufficient but not greater than that  
17 necessary to achieve its purposes. And so I've really  
18 tried to focus on the purposes and the need for the  
19 sentence.

20           The need for the sentence is, first of all, as  
21 I've already indicated, to impress upon you the  
22 seriousness of the crime that you've committed. The  
23 opiate plague in Maine that we are experiencing is  
24 horrific, and the introduction of over a thousand  
25 oxycodone tablets into the Lewiston or Portland

1 markets, if you had been successful, would have done  
2 great damage. And so I'm satisfied that the sentence  
3 in this case has to reflect, both for you and also for  
4 the public, that this was a serious crime which the  
5 Court takes very seriously as well and is deserving of  
6 significant punishment.

7 You've already been incarcerated once. That  
8 didn't redirect you. I don't want you to be  
9 incarcerated a third time. I want this to be the last  
10 time. And I want the sentence to be sufficiently stiff  
11 that you understand that it's only going to be much,  
12 much worse if you can't turn your life around, because  
13 it is.

14 I'm also concerned about the history that you  
15 have, even in the face of really good reasons not to  
16 revert to the drug trade, and of course those reasons  
17 would be your children. The fact is that you have  
18 fallen back on it, as the circumstances seem to have  
19 compelled you to do or at least you felt compelled to  
20 do, both after your Massachusetts incarceration and  
21 then, of course, right after your arrest here. And  
22 that causes me grave concern and, again, tells me that  
23 the sentence in this case needs to be of sufficient  
24 length to impress upon you that we will not tolerate  
25 this anymore and that, if you find yourself back before

1       a judge a third time for sentencing for this type of  
2       behavior, you're going to be going away for a long,  
3       long time. That's the deterrent end of the purpose of  
4       the sentence.

5           Also it seems to me the sentence here should  
6       account, however, for your -- the indications that  
7       you've presented to me that you are rehabilitatable.  
8       Among the most notable is this past year plus since  
9       you've been on detention or have been out, rather, not  
10      detained but on release, and have put together a  
11      sustained period of time in which you've worked and  
12      demonstrated a desire to be a father and to lead a  
13      healthy life, healthier than you were leading.

14          I also identify as a significant purpose or need  
15      for the sentence to provide you with needed educational  
16      and vocational training and other correctional  
17      treatment in the most effective manner. The record  
18      reflects that you yourself have identified the need for  
19      anger management. It's very clear that you need a  
20      sustained period of drug treatment, and it's also clear  
21      to me that you would benefit from any work force or  
22      vocational training that might be available to you  
23      during your period of incarceration and that, if there  
24      is any available to you, it should be for a period of  
25      time that's sufficient to make it meaningful. And I

1 have factored that into my sentence as well.

2 So to summarize the prime purposes of the  
3 sentence, the need for the sentence as I've identified  
4 it is to impress upon you and the public the  
5 seriousness of your crime, to afford deterrence to you,  
6 and to provide you with needed educational and  
7 vocational training and other correctional treatment in  
8 the most effective way. Taking all those into  
9 consideration, I've concluded that the guideline range  
10 is -- of 41 to 51 months is greater than that  
11 necessary. So at this time I would like you to stand  
12 for sentencing.

13 Based upon all those considerations, I've  
14 concluded that a just and fair sentence is as follows:  
15 I am going to commit you to the custody of the U.S.  
16 Bureau of Prisons to be imprisoned for a total term of  
17 36 months. I will recommend to the Bureau of Prisons  
18 that you be incarcerated at Berlin in New Hampshire and  
19 that you be considered for participation in the  
20 500-hour drug treatment program.

21 I am going to grant your request on the one hand  
22 to be released -- to self-report, so that I'm directing  
23 that you self-report by 2:00 o'clock p.m. on  
24 September 25th, 2015. I want to remind you, and you  
25 should have a chance to confer with Attorney Andrews

1 about this before we close the record on that issue,  
2 that you will be obligated to get yourself to the  
3 institution where you're told to report, and there's no  
4 guarantee it's going to be Berlin. It's going to be  
5 where the Bureau of Prisons decides you should be  
6 incarcerated, and that would be at your expense and  
7 responsibility. So if there's any concern about that,  
8 Attorney Andrews, you should raise that with me before  
9 we close the record of this case.

10 MR. ANDREWS: Your Honor, and -- my only  
11 concern is my understanding was that the Bureau of  
12 Prisons will send out a letter as to when he had to  
13 report, and I just want to make sure that the Court was  
14 aware that that's how self-report occurs and that I'm  
15 worried that by the 25th won't be enough time for the  
16 Bureau of Prisons to have sent out that letter.

17 THE COURT: Attorney Joyce, what's your view  
18 on that?

19 MR. JOYCE: Your Honor, I -- I don't have any  
20 information about how long it typically takes. I can  
21 tell the Court from prior matters the time given is  
22 generally about a month. Perhaps the marshals or  
23 probation office would have more concrete information  
24 about that.

25 THE COURT: Ms. Belanger, do you have any

1 information to provide on this question?

2 PROBATION OFFICER: Judge, I don't directly  
3 from BOP, but I would agree with the Government that in  
4 prior cases with other judges they do do at least a  
5 month for self-reporting.

6 THE COURT: All right. I'll modify the  
7 requirement to October 16th at 2:00 p.m. I have  
8 carefully considered the motion that you filed with  
9 respect for request to be released pending appeal. I  
10 have considered all of the arguments made therein. I  
11 am not persuaded that the circumstances justify that he  
12 be released on bail pending appeal in this case, and so  
13 the motion is denied.

14 I'm going to order that, Mr. Azor, that you be on  
15 supervised release following your incarceration for a  
16 term of three years. You are ordered to report to the  
17 probation office in the district to which you are  
18 released within 72 hours of release from the custody of  
19 the Bureau of Prisons and to comply with all the  
20 standard conditions that have been adopted by the  
21 Court.

22 Attorney Andrews, have you reviewed with Mr. Azor  
23 all the standard conditions of release?

24 MR. ANDREWS: I have, Your Honor.

25 THE COURT: And are you satisfied that he

1 understands them?

2 MR. ANDREWS: I do.

3 THE COURT: Is that correct, Mr. Azor?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You are aware of and understand  
6 all of the standard conditions of release; is that  
7 correct?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: With respect to the special  
10 conditions of release, which I'm now going to recite  
11 into the record, I am going to sustain the objection to  
12 the special condition with respect to computer and  
13 Internet monitoring. I am otherwise, however, going to  
14 impose the following special conditions:

15 First, that Mr. Azor participate in mental health  
16 treatment, specifically to address anger management, as  
17 directed by the supervising officer until released from  
18 the program by the supervising officer. He is to pay  
19 or copay for services during the treatment to the  
20 supervising officer's satisfaction. Do you understand?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Secondly, that his  
23 participation -- he is to participate, rather, in work  
24 force development programs and services as directed  
25 and, if not employed, shall perform up to 20 hours of

1 community service per week. Work force development  
2 programming may include assessment and testing,  
3 educational instructions, training classes, career  
4 guidance, and job search and retention services. Do  
5 you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You are to not use or possess any  
8 controlled substance, alcohol, or other intoxicant, and  
9 shall participate in a program of drug and alcohol  
10 abuse therapy to the supervising officer's  
11 satisfaction. This will include testing to determine  
12 if you have used drugs or intoxicants. You are to  
13 submit to one test within 15 days of release from  
14 prison and at least two but not more than 120 tests per  
15 calendar year thereafter as directed by the supervising  
16 officer. You are to pay or copay for services during  
17 the treatment to the supervising officer's  
18 satisfaction. You're not to obstruct or tamper or try  
19 to obstruct or tamper in any way with any tests. Do  
20 you understand?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Fourth, a probation officer may  
23 conduct a search of you and of anything you own, use,  
24 or possess if the officer reasonably suspects that you  
25 have violated a condition of supervised release and

1 reasonably suspects that evidence of the violation will  
2 be found in the areas to be searched. Searches must be  
3 conducted at a reasonable time and in a reasonable  
4 manner. Failure to submit to a search may be grounds  
5 for revocation of release. Again, do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: I find that all of these -- each  
8 of these conditions is necessary and justified on the  
9 basis of the information set forth in the revised  
10 presentence report. The defendant himself has  
11 recognized his need for mental health treatment to  
12 address anger management. It's apparent he's in need  
13 of work force development programs and services, given  
14 the absence of any sustained vocational training and  
15 work history. His need for substance abuse treatment  
16 and monitoring is also apparent, given the nature of  
17 this crime and his earlier crime, and for the similar  
18 reason the search requirement is needed as well.

19 Attorney Andrews, is there any objection to the  
20 conditions of release as I have now indicated?

21 MR. ANDREWS: No, Your Honor.

22 THE COURT: I did not say but I also want to  
23 indicate for the benefit of counsel as well as the  
24 record that I take very seriously the argument that was  
25 made with respect to avoiding unwarranted disparities

1 with respect to sentence, particularly as pertains to  
2 the other defendants that are part of the indictment to  
3 which Mr. Azor is subject in this case. And suffice it  
4 to say that I have given careful consideration to that  
5 and have of course sought to try and individualize the  
6 sentence in this case, taking into account among other  
7 things the prior conviction record and also the  
8 individual circumstances of each defendant.

9 Before I advise Mr. Azor of his rights of appeal,  
10 is there anything further from the Government?

11 MR. JOYCE: Your Honor, I didn't hear the  
12 Court impose the \$100 mandatory special assessment,  
13 perhaps I missed it, but I just want to make sure  
14 that's part of it.

15 THE COURT: You didn't miss it. I didn't say  
16 it. Thank you. Let me turn to that.

17 Mr. Azor, I am imposing a \$100 special assessment.  
18 I'm also finding that you do not have the ability to  
19 pay a fine and so I'm waiving a fine in this case.

20 Attorney Joyce, is there anything else?

21 MR. JOYCE: There is not, Your Honor, thank  
22 you.

23 THE COURT: Attorney Andrews, anything else?

24 MR. ANDREWS: No, Your Honor.

25 THE COURT: Mr. Azor, I want to advise you of

1 your rights of appeal. To -- you have the right to  
2 appeal both your conviction and sentence. If you wish  
3 to exercise that right, you have to file a written  
4 notice of appeal with the clerk of this court within  
5 14 days of today. Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Secondly, if you fail to do that,  
8 you will have given up your right to appeal, and that  
9 would be both your sentence and conviction, and there  
10 will be no right to appeal. Do you understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Finally, if you can't afford to  
13 file the appeal, you can appeal without expense to you.  
14 The clerk will prepare and file the appeal on your  
15 behalf if you request her to do so within 14 days of  
16 today. Do you understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: I've already indicated that I'm  
19 releasing you to self-report on the -- by the date that  
20 I've indicated and as otherwise directed by the Bureau  
21 of Prisons.

22 Is there anything further from the prosecution?

23 MR. JOYCE: Only that I assume the existing  
24 bail conditions remain in effect?

25 THE COURT: Yes, thank you. Mr. Azor, all

1 existing conditions of release, your bail conditions,  
2 remain in place and you have to comply with them. Do  
3 you understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Anything else?

6 MR. JOYCE: No, thank you, Judge.

7 THE COURT: Attorney Andrews, anything else on  
8 your behalf?

9 MR. ANDREWS: No, Your Honor.

10 THE COURT: I want to thank both counsel for  
11 their assistance and advocacy in this case.

12 Mr. Azor, I do want to wish you good luck. I  
13 don't take any pleasure in having to sentence you. It  
14 seems to me that if what comes from this is that you do  
15 actually get some benefit from being incarcerated,  
16 which of course is my hope and intention, that would be  
17 great. If you turn your life around when you get out,  
18 after some time, if you find yourself to be successful  
19 in life, write me a letter, let me know. Nothing would  
20 give me greater pleasure than that.

21 THE DEFENDANT: Thank you, sir, I will.

22 THE COURT: All right. Good luck to you.  
23 Thank you, counsel, Court will be in recess.

24 (Time noted: 11:29 a.m.)  
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1  
2                   C E R T I F I C A T I O N  
3

4       I, Lori D. Dunbar, Registered Merit Reporter, Certified  
5       Realtime Reporter, and Official Court Reporter for the  
6       United States District Court, District of Maine,  
7       certify that the foregoing is a correct transcript from  
8       the record of proceedings in the above-entitled matter.

9       Dated: January 8, 2016

10                   /s/ Lori D. Dunbar

11                   Official Court Reporter

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